

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MICHAEL ORR,

Petitioner,

v.

WARDEN LASHANN EPPINGER,

Respondent.

) Case No.: 1:17 CV 2695  
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JUDGE SOLOMON OLIVER, JR.

MEMORANDUM OF OPINION  
AND ORDER

On December 27, 2017, Petitioner Michael Orr filed this habeas corpus action under to 28 U.S.C. § 2254 in the above-captioned case. He seeks to challenge his 2001 conviction in the Cuyahoga County Court of Common Pleas, pursuant to a guilty plea, for robbery. As grounds for the Petition, he asserts he was convicted in the absence of a criminal complaint and that the judgment of conviction is void on its face.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

Even assuming Petitioner has set forth a cognizable ground for habeas relief, it is evident on the face of the petition that he has yet to appeal his conviction, an avenue still available to him under Ohio Appellate Rule 5. Thus, regardless of the potential merits of his claims, on which this court expresses no opinion, his Petition is premature.

Accordingly, this action is dismissed without prejudice, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, for failure to exhaust state court remedies. The Court certifies,

pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability, Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

/S/ SOLOMON OLIVER, JR.  
UNITED STATES DISTRICT JUDGE

April 19, 2018